

cation of such member," the effect of the act being merely to broaden the scope of the active duty for training that may be performed by a member of the Fleet Naval Reserve.

The effect of the act of April 25, 1917, being thus limited, the determining factor as to right to pay while in hospital in any case where a member of the Fleet Naval Reserve is assigned to active duty for training in time of peace and is thereafter placed in hospital for treatment is whether or not, by placing the man in hospital, his active duty status was terminated. The general rule underlying the decision of this office above cited is, therefore, still applicable, but the question of its applicability to any particular case is one dependent upon the facts of that case, having regard to the nature of the orders placing the man in hospital and to the nature and place of performance of the active duty on which he had been engaged, as well as the duration of the period for which he has been ordered to perform active duty.

With respect to the members of the Fleet Naval Reserve called into active service in time of war, not for purposes of instruction or training, but in defense of the nation, and afterwards placed in hospital for treatment, a different rule from that stated in the above cited decision is applicable.

The act of August 29, 1916, provides as follows:

"All members of the Naval Reserve Force shall, when actively employed as set forth in this act, be entitled to the same pay, allowances, gratuities, and other emoluments as officers and enlisted men of the naval service on active duty of corresponding rank or rating and of the same length of service." (39 Stat., 588.)

* * * * *

"Members of the Naval Reserve Force may be ordered into active service in the Navy by the President in time of war, or when, in his opinion, a national emergency exists." (39 Stat., 587.)

* * * * *

"Enrolled members of the Naval Reserve Force may, in time of war or national emergency, be required to perform active service in the Navy *throughout the war* or until the national emergency ceases to exist." (39 Stat., 588.)

It would appear that the effect of these provisions is to place a member of the Fleet Naval Reserve, or of any other division of the Naval Reserve Force, called into active service in time of war, in the same status, with respect to rights, privileges, and duties as officers or enlisted men of the Regular Navy, including the same right to hospital treatment and to pay while undergoing such treatment.

It would indeed be a strange law, or a strange construction of the act of August 29, 1916, that would deny to a man called into the naval service of his country in time of war, and wounded or other-

wise disabled in such service, the right to pay while under treatment for such wound or disability, and such a construction of the act of August 29, 1916, is not required.

Accordingly, I am of the opinion that, in the case of a member of the Fleet Naval Reserve called into active service in time of war, and thereafter sent to a hospital for treatment, such officer or enlisted man (as the case may be) is entitled to pay while in hospital, under the same circumstances and subject to the same limitations under which an officer or an enlisted man of the Regular Navy would be so entitled, no presumption as to termination of active-duty period arising merely from such person's being transferred to a hospital. (In this connection, however, attention is invited to articles Nos. 3221 and 3222, Naval Instructions, and article No. 3582 (7), Naval Regulations of 1913.)

The questions involved in your submission are answered accordingly.

PAYMENT OF RENT IN ADVANCE.

Under existing law the payment of rent in advance, by the month, year, or quarter, for naked lands leased to the Government, is not authorized (12 Comp. Dec., 782, modified).

Decision by Comptroller Warwick, May 23, 1917:

By his letter dated the 18th instant, the Auditor for the War Department calls attention to the decision of this office of June 22, 1906, as found in 12 Comp. Dec., 782, and suggests a modification of it, for reasons stated by him in his said letter.

In said decision it was held, quoting the syllabus, that:

"Payment of rent in advance, by the month, year, or quarter, for naked lands leased to the Government, of which it has been placed in possession by the lessor, is not in violation of the terms of section 3648 of the Revised Statutes, as the Government obtains all its contracts for when it is placed in possession under the lease." (See also 19 Comp. Dec., 421.)

Section 3648, Revised Statutes, provides:

"No advance of public money shall be made in any case whatever. And in all cases of contracts for the performance of any service, or the delivery of articles of any description, for the use of the United States, payment shall not exceed the value of the service rendered or of the articles delivered previously to such payment."

In his letter the auditor says:

"* * * There are many contracts on file in this office for the rental of real property, and, so far as known, with but one exception, these contracts provide for payment at stated intervals subsequent to the prior use of the rented premises by the Government, thus bringing them within the letter and spirit of the Revised Statutes above cited.

"There has been filed within the past few days in this office a lease for certain lands in the State of New York, executed on the 1st instant by the Hempstead Plains Company and an officer of the Aviation Section of the Signal Corps, wherein there is a marked departure from the ordinary provisions in leases heretofore received. By the terms of the contract referred to the lessor was to receive, and probably has received, \$2,000, which was 'to be paid at the consummation of this contract,' covering a rental for the period from May 1, 1917, to June 30, 1917. The contract further provides that upon receipt of written notice from the lessee on or before June 15, 1917, the lessor will renew the agreement for a term commencing July 1, 1917, and ending June 30, 1918, for the sum of \$10,000, to be paid September 1, 1917, and in other paragraphs of the lease this right of renewal from July 1st of each year for succeeding years, to and including July 1, 1920, is preserved, at varying rates of rental, all to be paid on September 1st of each year covered by the contract. Thus for the fiscal year ending June 30, 1919, \$12,000, and for the fiscal year ending June 30, 1920, and the fiscal year ending June 30, 1921, \$15,000 in each year is to be paid. The premises leased are in the town of Hempstead, county of Nassau, State of New York, consisting of about 660.11 acres, and are to be used as an aviation ground by the Signal Corps. * * *

The gist of the decision in 12 Comp. Dec., 782, is that in the matter of naked lands leased to the Government, where the leased lands have been placed in the possession of the Government by the lessor, the Government has obtained all its contracts for under the lease, and hence a payment of rental at such time is not a payment in violation of section 3648, Revised Statutes.

In a strictly technical sense, perhaps, the holding of the former Comptroller may find support, but my own view of the law is that payment of rent in advance of use of lands leased to the Government is in violation of the terms of said section 3648 of the Revised Statutes. While a lease of land is a modified ownership of the land, yet it seems to me to contemplate something more than the mere possession or occupation of the land.

A lease is defined to be a contract for the possession and profits of lands and tenements, either for life or for a certain period of time. In addition to the possession or occupation there is the use and enjoyment of the leased lands. The use and enjoyment may be terminated in several ways during the lifetime of the lease. The Government might lose the use and enjoyment entirely and likewise the profits of the land.

It would seem to me that the purpose and spirit, if indeed not the plain letter, of the law, are against advance payments of rent for leased lands. The auditor's statement would indicate that very few contracts of lease have been entered into wherein provision has been made for the payment of rent in advance of the use of the leased premises. This would indicate that the decision of June

22, 1906, has not been relied upon to any considerable extent in making leases wherein it is proposed to pay the rental consideration thereof in advance of the use of the leased lands.

The decision in 12 Comp. Dec., 782, is modified to accord with the views herein expressed. Hereafter payment of rent in advance by the month, year, or quarter for naked lands leased to the Government will not be recognized by the accounting officers.

PROPERTY AND DISBURSING OFFICERS, NATIONAL GUARD—DATE FROM WHICH ENTITLED TO PAY.

Since the right to the pay attached to an office is incident to the legal title to the office and not to the performance of the duties thereof, a property and disbursing officer of the National Guard of a State is entitled to the pay of his office from the date on which he became invested with the office by qualifying therefor, notwithstanding the fact that conditions were such as to prevent his entering immediately into the performance of the duties thereof.

Comptroller Warwick to the Secretary of War, May 23, 1917:

I have your letter of the 12th instant requesting my decision whether a property and disbursing officer for the United States in a State, Territory, or the District of Columbia, appointed, designated, or detailed as prescribed in the national-defense act of June 3, 1916 (39 Stat., 200), is entitled to pay authorized for the office from the day he qualifies as such property and disbursing officer, which you state is the date his bond is approved by you, regardless of whether he has entered upon and performed the duties devolving upon such officer as prescribed by you.

Section 67 of the act of June 3, 1916, provides:

"The governor of each State and Territory and the commanding general of the National Guard of the District of Columbia shall appoint, designate, or detail, subject to the approval of the Secretary of War, an officer of the National Guard of the State, Territory, or District of Columbia who shall be regarded as property and disbursing officer for the United States. He shall receipt and account for all funds and property belonging to the United States in possession of the National Guard of his State, Territory, or District, and shall make such returns and reports concerning the same as may be required by the Secretary of War. * * * He shall render, through the War Department, such accounts of Federal funds entrusted to him for disbursement as may be required by the Treasury Department. Before entering upon the performance of his duties as property and disbursing officer he shall be required to give good and sufficient bond to the United States, the amount thereof to be determined by the Secretary of War, for the faithful performance of his duties, and for the safe-keeping and proper disposition of Federal property and funds entrusted to his care. He shall, after having qualified as property and disbursing officer, receive